

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

CIVIL ACTION NO.: 1:19-cv-00086

DENNIS F. JOHNSON,

Plaintiff,

vs.

SUN PET, LTD. and CENTRAL
GARDEN & PET COMPANY,

Defendants.

**NOTICE OF REMOVAL TO
FEDERAL COURT**

TO: UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

Defendants SUN PET, LTD. (hereinafter “Sun Pet”), and CENTRAL GARDEN & PET COMPANY (hereinafter “Central Garden”) (collectively referred to as “Defendants”), by and through their undersigned counsel, respectfully remove the above-entitled action from the Superior Court for Rowan County, North Carolina (“State Court”) to the United States District Court for the Middle District of North Carolina, pursuant to 28 U.S.C. §§ 1331, 1441(a) and 1446. This action is being removed to Federal Court based on federal question jurisdiction.

In support of this Notice of Removal, Defendants state as follows:

1. This action is being removed to this Court based on federal question jurisdiction, pursuant to 28 U.S.C. §§ 1331 and 1441, in that the action arises under the laws of the United States, namely the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et. seq.* (the “ADA”).

2. On or about December 14, 2018, Plaintiff filed a civil action against Defendants in the Superior Court for Rowan County, North Carolina, entitled: *Dennis F. Johnson v. Sun Pet, Ltd. and Central Garden & Pet Company*, File No. 18 CVS 2890 (“State Action”).

3. On or about December 17, 2018, Defendant Sun Pet was served with the State Court Action Summons and a copy of Complaint by certified mail via its registered agent.

4. According to information received from Rowan County Superior Court, Defendant Central Garden was served with Summons and a copy of the Complaint by certified mail on or about December 18, 2018. However, Defendant Central Garden has no record of such service.

5. Pursuant to the provisions of 28 U.S.C. § 1446, a true and accurate copy of the State Action Summons and Complaint served upon Sun Pet are attached hereto as **Exhibit A** and are incorporated herein by reference.

6. This Notice of Removal is timely filed within thirty (30) days of the earliest service of the Summons and Complaint in the State Action on any Defendant. Accordingly, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b)(2).

7. Both Defendants consent to this removal.

8. No further proceedings have occurred in the State Action. Defendants have not served any answer or other responsive pleading to the Summons and Complaint, nor made any appearance, argument, or request for relief before the General Court of Justice, Superior Court Division for Rowan County, North Carolina (“Superior Court”).

9. The United States District Court for the Middle District of North Carolina embraces the district in which the aforementioned State Action is now pending, i.e. Rowan

County. Therefore Defendants hereby file their notice of removal of this action from the Superior Court in which it is now pending to the United States District Court for the Middle District of North Carolina.

10. This Court has federal question jurisdiction over this civil action pursuant to 28 U.S.C. §§ 1331 and 1441(b) on the grounds that Plaintiff's Complaint purports to assert claims against Defendants alleging a violation of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 *et. seq.*, Complaint – Third Cause of Action.

11. Defendants contend that the District Court will be acting within its discretion by exercising supplemental jurisdiction over any purported state law claims, pursuant to 28 U.S.C. § 1367(a). These claims relate to the same transaction and events as Plaintiff's claims under federal law - i.e. Plaintiff's discharge – and simply offer differing theories of liability for such discharge.

12. As required by 28 U.S.C. § 1446(d), Defendants are serving written notice of the filing of this Notice of Removal to Federal Court on the Plaintiff and are promptly causing to be filed a copy of this Notice of Removal to Federal Court with the Clerk of the Superior Court for Rowan County, North Carolina, as an exhibit to the Notice of Filing Removal to Federal Court to be filed in State Court, a copy of which is attached hereto as **Exhibit B**.

13. Defendants submit this Notice without waiving any defenses to the claims asserted by Plaintiff or conceding that Plaintiff has claims upon which relief may be granted. Defendants specifically reserve any and all defenses pursuant to Federal Rules of Civil Procedure 12(b)(2), (4), (5) and (6).

WHEREFORE, Defendants Sun Pet, Ltd., and Central Garden & Pet Company pray that this action be removed from the Superior Court of Rowan County, North Carolina, to the United States District Court for the Middle District of North Carolina.

Respectfully submitted this the 16th day of January, 2019.

JACKSON LEWIS P.C.

BY: /s/ M. Robin Davis
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Plaintiff,

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CERTIFICATE OF
SERVICE

The undersigned certifies that on January 16, 2019, the foregoing *Notice of Removal to Federal Court* was electronically filed with the Court of the Court, using the Court's CM/ECF electronic service system, and served on all parties by depositing a copy of same in the United States Mail, postage prepaid and addressed as follows:

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